

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5002 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

DEVIBEN WD/O. DINESHRAI

KANTILAL TRIVEDI

Versus

STATE OF GUJARAT

Appearance:

MR MANISH R BHATT for Petitioner

MR PS PATEL for MR HM BHAGAT for Respondent No.
1,2,3.

MR MUKESH PATEL AGP for Respondent No. 4.

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 24/11/98

ORAL JUDGEMENT

Rule. Service of rule is waived by Mr. P.S.Patel,
learned advocate appearing for M/s. H.M.Bhagat & Co. ,
Government Solicitors for respondents nos. 1,2 and 3 and
Mr. Mukesh Patel, learned Assistant Government Pleader
appearing for respondent No. 4.

2. Heard.

3. It appears that the land in question came to be
leased to the petitioner's husband Shri Dineshrai K.
Trivedi for excavation of lime stone. Apart from the

fact that said Dineshrai K. Trivedi was suffering from number of ailments, it also transpired that the land was submerged in water which resulted in said Dineshrai K. Trivedi writing letter dated 7th September, 1992 to the Assistant Geologist, Vadodara expressing that he was surrendering or that he wanted to surrender the lease. In reply, he was informed by communication dated 30th October, 1992 that he should pay the rent, royalty and other charges, if any, for a period of six months from the date of notice i.e. from 7.9.1992 to 6.3.1993. It is the case of the petitioner that somewhere in the month of October-November, 1992, he attended the office of the Mamlatdar (respondent No. 4 herein) for surrendering the leasehold land. It is the further case of the petitioner that taking advantage of his ill health, his signature was obtained on blank piece of paper stating that the possession was taken over by the Government and that appropriate possession receipt was to be sent to him in due course of time. On 7th September, 1996, said Mr. Dineshrai K. Trivedi died. It was thereafter that on 22nd July, 1997, the petitioner received notice calling upon her to pay Rs. 4,60,000 by way of lease rent/dead rent and other charges. The petitioner made representation in reply to the said notice and considering her case, demand of Rs. 2,16,000/- was raised by communication dated 11th August, 1997. She, therefore, tendered the demand draft of Rs. 70,000/with a prayer for instalments to be granted to her for the balance amount. Since in January, 1998, demand draft was returned and original demand of Rs.4,16,000/- was raised once again, the petitioner was required to file the present petition.

3. On 30th June, 1998, following order was passed:

"Mr. R.P.Bhatt, learned counsel for the petitioner states that the petitioner is prepared to pay the amount of royalty or dead rent, whichever is higher, for the period from 7.9.1992 to 6.3.1993 for the mining lease in question as per the communication dated 30.12.1992 (Annexure "C" to the petition - pg. 32), which is worked out to Rs..2,16,207/- as per the order dated 11.8.1997 (Annexure "G" to the petition pg. 37) within such time schedule as may be fixed by this Court, without prejudice to the petitioner's rights and contentions.

Notice returnable on 23rd July, 1998. Till then, there shall be ad interim relief against

enforcement of the summons at Annexure "E" to the petition on condition that the petitioner deposits a sum of Rs. 70000/- (Rs. seventy thousand only) with the Mamlatdar, Baroda City, respondent No. 4 herein on or before 10th July, 1998 and respondents no. 4 shall accept the same without prejudice to the rights and contentions of the respondent.

Direct Service is permitted."

By consent of the learned advocate appearing for the petitioner and the learned Government Solicitors as well as the learned Assistant Government Pleader, this matter is taken up for final hearing today. Having heard them, it appears that it was the condition of lease that a notice for a period of six-6 months was required to be given for surrendering the lease in question. In fact, the petitioner's late husband did express his intention to surrender the lease on 7th September, 1992 and that fact is not in dispute. Even subsequent events indicate that the land was in fact surrendered to the Government. In that view of the matter, maximum that the respondents can demand from the deceased Dineshrai K. Trivedi and, therefore, from the petitioner through the estate of the deceased, is the lease rent and/or dead rent and/or other charges only for a period of six months and nothing more than that. It is a fact that pursuant to the order passed by this Court, the petitioner has deposited/paid a sum of Rs. 1,00,000/- (Rs. one lac only). Hence, bearing in mind all these facts, following directions are required to be issued :

The respondents shall decide the actual amount for a period of six months from 7.9.1992 to 6.3.1993 payable by the deceased as per the aforesaid condition of the lease deed. The respondent No. 2 will take such decision within a period of one month from the date of receipt of these directions. Respondent No. 2 will also give credit of the amount already paid/deposited by the petitioner as aforesaid and shall work out the balance amount payable for the aforesaid period of six months. If necessary, respondent No. 2 will hear the petitioner with regard to the working of such balance amount and communicate decision to the petitioner within a period of one week from the date of taking of the decision by respondent No. 2 as aforesaid. It is made clear that in working out such amount, no interest is to be calculated. The petitioner will make payment of such balance amount ascertained by respondent No. 2 within two months from

the date of receipt of such communication. Rule is made absolute only in the aforesaid terms with no order as to cost.

24.11.1998. (M.S.Parikh,J.)

Vyas